

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL A. GRINDEMANN,

Plaintiff,

v.

ROBERT HUMPHREYS,

Defendant.

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OPINION AND ORDER

12-cv-205-wmc

In this proposed civil action, plaintiff Michael A. Grindemann alleges that defendant Robert Humphreys, the warden of Racine Correctional Institution (“RCI”), violated his rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by refusing him sexual adjustment treatment. In an earlier order, the court denied Grindemann leave to proceed, finding his original complaint lacked sufficient specific allegations to plead a class-of-one equal protection claim against Humphreys. (Sept. 24, 2012, Op. & Order (dkt. #9).) The court did, however, grant Grindemann leave to amend his complaint, instructing Grindemann that to state a claim he must “allege in good faith both: (1) the absence of a rational basis for Humphreys’ singling him out (e.g., others had been removed from treatment in the past and allowed to resume treatment in the same time frame or circumstances as Grindemann); *and* (2) the existence of some improper motive for Humphreys for singling Grindemann out.” (*Id.* at 6.)<sup>1</sup>

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<sup>1</sup> The court’s original screening order also denied Grindemann leave to proceed against the other putative defendants named in his complaint, and denied Grindemann leave to amend his complaint with respect to those defendants. While Grindemann urges the

In response, Grindemann filed an amended complaint and an affidavit. Because Grindemann's amended complaint still fails to state a claim under the equal protection clause, the court will deny Grindemann leave to proceed under 28 U.S.C. § 1915 and will dismiss the complaint with prejudice pursuant to Fed. R. Civ. P. 12(b).

## FACTS

The court again reads Grindemann's allegations generously, *see Haines v. Kerner*, 404 U.S. 519, 521 (1972), and assumes that plaintiff can prove all of the allegations in his amended complaint. Rather than recount the facts re-alleged from Grindemann's original complaint, the following describes only additional allegations contained in his proposed amended complaint:

- "It was clear to the Plaintiff at the time that Humphreys had an axe to grind and Grindemann was a convenient target. As to Humphreys' motive, one would have to ask Humphreys." (Am. Compl. (dkt. #10) 1.)
- "Other men have been terminated from treatment and allowed to return to SO-4 programming." Grindemann specifically mentions two individuals, Scott Broker

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court to reconsider this aspect of the decision as well, the court declines to do so. As explained in its earlier opinion, Grindemann alleged that *Humphreys* made the decision to deny him sexual adjustment treatment against the advice of the doctor defendants. Absent some personal involvement by the other putative defendants to deny him treatment, Grindemann cannot state a claim against them. The court also rejects Grindemann's assertion of a conspiracy in his proposed amended complaint. This conclusory allegations runs counter to the more specific allegations in his original complaint, alleging that Humphreys ordered the doctor defendants to remove him from treatment.

and Rex Tande, who were allowed to return to treatment, while he and another individual, Harris, were denied a second “shot at treatment” at RCI. (*Id.* at 2.)

- While Grindemann compares himself to Broker and Tande, he also acknowledges that Harris and he “were specifically terminated years earlier from [Dr.] Alexander’s Oshkosh program, the others were not.” (*Id.*)
- “Osscam’s razor suggests the more obvious solution is probably the correct one;<sup>2</sup> when all other solutions are proved to be in error, you are left with the correct one: Alexander and Humphreys conspired to deny Harris and Grindemann treatment because once Alexander terminates an offender from treatment, he will *never* receive another opportunity for treatment if she has her way, and Humphreys gave her her way.” (*Id.* at 3 (emphasis in original).)

## OPINION

The law surrounding “class of one” claims is somewhat unsettled in the Seventh Circuit. In an *en banc* decision decided last year, a plurality held that to succeed on such a claim, plaintiff must show a defendant should have known its discriminatory actions lacked justification. *See Del Marcelle v. Brown Cnty. Corp.*, 680 F.3d 887, 889 (7th Cir. 2012) (*en banc*) (Posner, J., lead opinion). In contrast, the dissent held that to prove such a claim, plaintiff must demonstrate (1) a defendant *intentionally* discriminated against her

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<sup>2</sup> “Occam’s razor (also written as Ockham’s razor, Latin *lex parsimoniae*) is a principle of parsimony, economy, or succinctness used in logic and problem-solving. It states that among competing hypotheses, the one that makes the fewest assumptions should be selected.” “Occam’s razor,” Wikipedia, [http://en.wikipedia.org/wiki/Occam%27s\\_razor](http://en.wikipedia.org/wiki/Occam%27s_razor) (last visited September 16, 2013).

and (2) there is no rational basis for the defendant's actions. *Id.* at 913 (Wood, J., dissenting). *See also Sung Park v. Ind. Univ. Sch. Of Dentistry*, 692 F.3d 828, 833 (7th Cir. 2012) (describing both approaches).

Unfortunately for Grindemann, his amended complaint falls short under either standard. Both standards require a showing (or at the pleading stage, allegations) that the defendant's action lacked any justification or rational basis. Here, Grindemann's pleading actually forecloses such a finding. While Grindemann alleges that another individual and he were treated differently than two other inmates who previously participated in sexual adjustment treatment, he also alleges a "justification" or a "rational basis" for his differential treatment: Grindemann had been terminated from treatment before, whereas these other individuals had not. As such, the court will deny Grindemann leave to proceed and will dismiss his complaint with prejudice.

## ORDER

IT IS ORDERED that:

- 1) plaintiff Michael A. Grindemann is DENIED leave to proceed on his claim that defendant Robert Humphreys violated his equal protection rights; and
- 2) the clerk of court is directed to enter judgment for defendants and close this case.

Entered this 16th day of September, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge